IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9061 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MALIBEN SD/O RUPSHIBHAI CHAUDHARI

Versus

STATE OF GUJARAT

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Appearance:

MS KUSUM M SHAH for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

MR RC KODEKAR, AGP, for Respondent No. 2

RULE SERVED BY DS for Respondent No. 4

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue appropriate writ, order or direction to quash the

judgment dated July 29, 1989 rendered by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.100/85 by which the order dated June 12, 1984 passed by Deputy Collector, Tharad in Ceiling Revision Application No.6/84 declaring that the respondent No.4 is holding 29 acres and 23 gunthas as surplus land under the Gujarat Agricultural Lands Ceiling Act, 1960 (the Act for short) is confirmed.

2. The petitioner is widow of Rupsinhbhai Chaudhari. and mother of the respondent No.4. Deceased Rupsinh Chaudhari was holding agricultural land admeasuring 83 acres and 36 gunthas situated at Village Moriba of Wav Taluka, District Banaskantha. His son Vagha Rupsinh Chaudhari i.e. the respondent No. 4 had submitted an application before the Mamlatdar & A.L.T., Wav declaring his total agricultural holdings. On receipt of the application, the Mamlatdar & A.L.T., Wav had issued public notice as well as individual notices under section 20 of the Act. After hearing the parties concerned, an order was passed on April 11, 1977 by the Mamlatdar & A.L.T., Wav declaring that Vagha Rupsinh Chaudhari was holding 21 acres and 30 gunthas of lands as surplus lands under the Act. That order was challenged by Vagha Rupsinh in Appeal No.1 of 1979 which was filed before the Deputy Collector, Tharad, who dismissed the same by an order dated September 30, 1981. The decision of the Deputy Collector was challenged before the Gujarat Revenue Tribunal by way of filing revision application No.TEN.B.A.705 of 1981. The Tribunal by its order dated June 17, 1983, remanded the matter to the Mamlatdar & A.L.T. for fresh decision after hearing the parties. After the remand, the Mamlatdar & A.L.T. recorded further evidence and heard the parties. The Mamlatdar & A.L.T by his order dated October 19, 1983 decided to withdraw the notices which were issued to the parties under section 20 (2) of the Act. This order of the Mamlatdar & A.L.T. was taken up in revision under section 37 of the Act before the Deputy Collector, Tharad. The proceedings before the Deputy Collector, were registered as Ceiling Revision No.6 of 1984. The Deputy Collector, Tharad issued notices to the parties and after hearing the parties declared by his order dated June 12, 1984 that Vagha Rupsinh was holding 29 acres and 23 gunthas of lands as surplus lands under the Act. The order of the Deputy Collector was challenged by Vagha Rupsinh before the Gujarat Revenue Tribunal by way of filing revision application No.TEN.B.A.100 of 1985. The Tribunal has dismissed the same by judgment dated July 29, 1989 giving rise to the present petition.

3. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution but what is challenged in the petition is the judgment of the Gujarat Revenue Tribunal and therefore for all practical purposes it is held that the petitioner has invoked the powers of superintendence conferred on High Court by Article 227 of the Constitution.

4. It is relevant to notice that Vagha Rupsinh Chaudhari who had invoked revisional jurisdiction of Gujarat Revenue Tribunal and who had failed before the Tribunal has not challenged the judgment of the Tribunal before the High Court but the judgment of the Tribunal is challenged by his mother i.e. widow of deceased Rupsinhbhai Chaudhari and Vagha Rupsinh Chaudhari is impleaded as respondent No.4 in the present petition. It is highly doubtful whether judgment of a Tribunal can be challenged by one who is not a party before the Tribunal by invoking jurisdiction of High Court under Article 227 of Constitution. Probably the respondent No.4 knew well that he would not succeed in assailing the judgment of the Tribunal and it is reasonable to infer that he has inspired and prompted his mother to file the present petition. However, without going into technicalities, I propose to decide the petition on merits.

5. In the petition, it is averred that the respondent No.4 was born in Sanvat Year 2002 and on death of Rupsinh, the petitioner as well as the respondent No.4 had become joint owners of the lands in question having equal share and therefore the decision of the Tribunal should be set aside. The petitioner has stated in the petition that the petitioner has 1/2 share in the lands and is in joint possession with respondent No.4 and as the petitioner has not relinquished her share in the suit fields in favour of respondent No.4 or anyone else either by making a statement before the competent authority or by executing a deed of relinquishment, lands admeasuring 29 acres and 23 gunthas could not have been declared as surplus lands under the Act. It is further mentioned in the petition that no partition of the properties has taken place between the petitioner and respondent No.4 and as the petitioner is absolute owner of her undivided share in the disputed fields, the Tribunal should have set aside the order of the Deputy Collector, Tharad declaring that the respondent No.4 was holding 29 acres and 23 gunthas of lands as surplus lands under the Act. In the petition, it is claimed that the petitioner has filed Regular Civil Suit No.15 of 1989 on January 16, 1989 in the Court of learned Civil Judge (S.D.), Palanpur and obtained interim relief directing the respondents to

maintain status-quo with regard to the disputed lands but now the petitioner is informed that in view of the provisions of the Act, the suit is not maintainable and therefore the petition is filed. What is claimed in the petition is that the petitioner being widow of Rupsinh has 1/2 share in the lands left by the deceased, and as no notice as required by section 20 (2) of the Act was served on her, the judgment rendered by the Tribunal should be set aside. The petitioner has referred to the provisions of section 14 of the Hindu Succession Act, 1956 and maintained that she having become absolute owner of her 1/2 share in the disputed fields left by her husband, land admeasuring 29 acres and 23 gunthas could not have been declared as surplus lands. The petitioner has also stated that the petitioner is deprived of her property without authority of law which is violative of right guaranteed to her under Article 300-A of the Constitution and therefore the judgment impugned in the petition should be set aside. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

6. I have heard the learned counsel for the parties and considered the documents forming part of the petition.

7. Section 6 of the Act provides that notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, no person shall, subject to the provisions of sub-sections (2), (3), (3A) and (3B) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area. Sub-section (2) of section 6 is material for the purpose of deciding the present petition and therefore, it would be relevant to reproduce the same in the judgment. The said sub-section i.e. sub-section (2) of section 6, reads as under:

> (2) Where an individual who holds land, is a member of a family not being a joint family which consists of the individual and his spouse or more than one spouse and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family excluding major sons, if any, shall be grouped together for the purposes of this Act and the provisions of this Act shall

apply to the total land so grouped together as if such land has been held by one person.

8. A bare reading of above quoted provision makes it manifest that where an individual, who holds land is a member of a family which is not a joint family and which consists of the individual and has spouse and their minor sons and minor unmarried daughters, then irrespective of fact whether the family also includes any major son and land is also separately held by the individual or by the members of the individual's family excluding major sons, if any, the lands have to be grouped together for the purposes of this Act and the provisions of the Act apply to the total land so grouped together as if such land is held by one person. It may be stated that what was claimed before the Tribunal by respondent No.4 was that he had a son who was major and therefore was entitled to a separate unit under the provisions of the Act. It was noticed by the Tribunal that the age of the son of the respondent No.4 was mentioned to be twelve years at the time when the form was submitted by the respondent No.4 before the Mamlatdar & A.L.T, Wav under the provisions of the Act. In the said form, it was never claimed by the respondent No.4 that the petitioner who is his mother was entitled to a separate unit nor was it claimed that after death of Rupsinh, there was any joint family as understood by provisions of the Act and more particularly as mentioned in Section 6 (2) of the Act. According to the respondent No.4, his son was major at the time when the form was submitted and was therefore entitled to a separate unit but it was never claimed by the respondent No.4 that his mother was also entitled to a separate unit. A request was made by the respondent No.4 to remand the matter to the Mamlatdar & A.L.T for the purpose of ascertaining the correct age of his son Harsang which was resisted by the learned Government Pleader who was representing the case of the respondents before the Tribunal. The Tribunal noted that the respondent No.4 himself had stated in the form before the competent authority under the provisions of the Act on June 28, 1976 that age of his son was twelve years. The Tribunal deduced that no mistake was committed by the respondent No.4 in stating the age of his son in the prescribed form which was submitted before the competent authority. Further the Tribunal perused the record of the Deputy Collector, Palanpur and more particularly the application which was submitted under section 8 of the Act and which was disposed of by an order dated June 28, 1977. The record indicated that the age of the son of the respondent No.4 was fourteen years. Having regard to the totality of the facts and circumstances of the case,

the Tribunal rejected the prayer to remand the matter for ascertainment of age of son of the respondent No.4 as well as the plea raised by the respondent No.4 to the effect that his son was major and was entitled to a separate unit under the provisions of the Act. It is relevant to notice that lands admeasuring 83 acres 36 gunthas were mutated in the name of the respondent No.4 and not in the name of the petitioner. The respondent No.4 had transferred land admeasuring 40 acres 34 gunthas to his minor son regarding which entry No.129 was mutated on 10-3-1971 but the Deputy Collector (Tenancy), Palanpur had disapproved the transfer by order dated June 28, 1977 under section 8 (1) of the Act as it was made to defeat the provisions of the Act. Therefore, the Tribunal was justified in rejecting the claim of the respondent No.4 that his son was major and was entitled to a separate unit.

9. Though the petitioner has claimed rights under section 14 of the Hindu Succession Act as well as under the provision of Hindu Womens' Right to Property Act, 1937, it is clear that in terms of provisions of section 6 (2) of the Act the lands held by deceased Rupsinhbhai Chaudhari were liable to be grouped together for the purposes of this Act and the provisions of the Act applied to the total lands so grouped together as if the land was held by one person. In paragraph-3 of the petition, the petitioner herself has stated on oath that Vagha Rupsinh Chaudhari i.e. the respondent No.4 was minor when his father Rupsinh died intestate. The declaration made by the competent authorities under the Act to the effect that the respondent No.4 is holding 29 acres and 23 gunthas of lands as surplus lands cannot be said to be deprivation of property in violation of provisions of Article 300-A of the Constitution. The petitioner has failed to point out any provision of the Act under which she would be entitled to have a separate unit while considering the question whether the respondent No.4 is holding surplus lands under the Act or not. The scheme contained in section 6 of the Act is as under:

No person is entitled to hold land in excess of the ceiling area either as tenant or as owner. This is subject to the provisions contained in sub-section (2) to sub-section (4) of section 6 of the Act. The Legislature has recognised a clear-cut distinction between the holding of an individual, holding of a family and holding of a joint family. If an individual holding land is a member of a family, the land standing in the name of his spouse and his minor sons and unmarried daughters are

liable to be clubbed together. Similarly in the case of a joint family of more than five members comprising a person and other members of specified category, such family will be entitled to hold land in excess of the ceiling area to the extent of one-fifth of such area for each member in excess of five, subject, however, to the maximum of twice the ceiling area. Again where a family is a joint family irrespective of the fact that the member includes a major son, each major son shall be deemed to be a separate person for the purposes of determining excess land. This is in short the scheme contained in section 6 of the Act. The petitioner has failed to point out that the son of the respondent No.4 was major at the time when respondent No.4 had submitted prescribed form before the competent authority under the Act. Therefore, the petitioner is not entitled to the reliefs claimed in the petition. The petition is therefore liable to be dismissed.

10. For the foregoing reasons, the petition fails and is dismissed. Rule discharged with no order as to costs. The interim relief granted earlier is vacated. However, having regard to the facts and circumstances of the case, the order of the Deputy Collector, Tharad declaring that the respondent No.4 is holding 29 acres and 23 gunthas of lands as surplus lands under the Act shall not be implemented for a period of two months from today to enable the petitioner to make necessary arrangement for removal of standing crops etc..

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